

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 122031-001-SF

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this _____ day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 23, 2011, XXXXX, on behalf of her minor son XXXXX (Petitioner), filed a request with the Commissioner of Financial and Insurance Regulation for an external review under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the request and accepted it on June 30, 2011.

The Commissioner immediately notified Blue Cross Blue Shield of Michigan (BCBSM) of the request for external review and asked for the information it used to make its final adverse determination.

The Petitioner receives health care benefits through the XXXXX Public Schools, a local unit of government self-funded health plan under Act 495. The plan is administered by BCBSM. Section 2(2) of Act 495, MCL 550.1952(2), authorizes the Commissioner to conduct this external review as though the Petitioner were a covered person under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Community Blue Group Benefits Certificate* (the certificate), which defines the Petitioner's health care benefits. The Commissioner reviews contractual issues pursuant to

MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner, born September 12, 2008, has speech, language, and oral motor delay. His pediatrician referred him to XXXXX, CCC-SLP, for an evaluation. XXXXX recommended speech therapy.

BCBSM denied coverage for the evaluation and therapy, stating that the therapist is not an eligible provider. The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference on May 5, 2011, and issued a final adverse determination dated June 8, 2011.

III. ISSUE

Did BCBSM correctly deny the Petitioner's claims for speech therapy?

IV. ANALYSIS

Petitioner's Argument

In January 2011, the Petitioner was evaluated by XXXXX at the XXXXX and he subsequently began attending speech therapy twice a week.

The Petitioner's mother does not understand BCBSM's reasons for denying coverage. She states that the certificate covers speech therapy from an out-of-network provider at 70%. She also does not understand why the therapist must be a physician. Lastly, she states BCBSM indicated it would not cover the therapy because XXXXX does not participate with BCBSM.

The Petitioner's mother believes that the therapy is medically necessary and a covered benefit under the certificate.

BCBSM's Argument

In its final adverse determination BCBSM denied payment for Petitioner's therapy indicating:

. . . [W]e pay *physician* services for speech therapy when provided for rehabilitation. As you know, XXXXX is not a physician, she is a speech pathologist. In addition, as we discussed, she is not a registered provider with BCBSM. Therefore, payment cannot be approved. . . .

In “Section 4: Coverage for Physician and Other Professional Provider Services,” the certificate states (p. 4.14):

Physical, Speech and Language Pathology and Occupational Therapy Services

We pay for **physician** services for physical therapy, speech and language pathology services, and occupational therapy when provided for rehabilitation.
[Emphasis added]

“Physician” is defined on p. 7.19 of the certificate as, “A doctor of medicine, osteopathy, podiatry, chiropractic, or an oral surgeon.” Since XXXXX does not meet the definition of “physician,” it is BCBSM’s position that the speech and language pathology services she performed are not payable.

Commissioner’s Review

BCBSM covers speech and language pathology services under two different sections of the certificate. In “Section 3: Coverage for Hospital, Facility and Alternatives to Hospital Care,” it states:

We pay for services in a freestanding outpatient physical therapy facility only when the facility that provides and bills for them is a **participating** facility.

NOTE: We will pay the facility directly for the service and not the individual provider who rendered the service.

Services That are Payable

- Physical therapy, speech and language pathology services and occupational therapy as, described on Pages 3.25 – 3.29, are payable when provided for rehabilitation. . . .

However, there is nothing in the record from which the Commissioner could conclude that the XXXXXX is a free-standing outpatient physical therapy facility that participates with BCBSM. In fact, BCBSM states that XXXXX does not participate. Therefore, there is no coverage for the Petitioner’s speech therapy under Section 3 of the certificate.

Section 4 of the certificate (as quoted in “BCBSM’s Argument” above), covers physician services for speech and language therapy. That section deals with speech therapy that is provided in an office setting. While the certificate allows the services to be provided by certain licensed

and credentialed non-physicians, BCBSM will only make its payment if the services are billed through a physician. Because XXXXX bills directly and not through a physician, the Commissioner concludes that BCBSM's denial of coverage is correct.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of June 8, 2011, is upheld. BCBSM is not required to provide coverage for the speech therapy provided by XXXXX

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner